

Amendment No. 1 to SB3729

Crowe
Signature of Sponsor

AMEND Senate Bill No. 3729*

House Bill No. 3758

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 1, Part 3, is amended by adding the following as a new section:

(a) In addition to other duties required by this title, the division of intellectual disabilities services (DIDS) shall:

(1) Provide written notice to the health and human resources committee of the house of representatives and the senate general welfare, health and human resources committee of its intent to propose legislation to permit immediate or gradual closure of any state-owned or state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and

(2)

(A) Provide written notice by registered mail to each resident, such resident's immediate family, if known, and such resident's guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities at least sixty (60) days prior to the next legislative session; and

(B) Include in the written notice provided under this subsection that the resident, the resident's immediate family, such resident's guardian, or any other interested party with standing to act on behalf of

the resident has the right to pursue legal action relating to the notice provisions of this subsection and relating to the closure of the facility.

(b) Any state-owned or state-operated facility or group home that provides residential services to persons with mental retardation or other developmental disabilities and that has been funded by the general assembly in any fiscal year, shall not be closed, nor shall DIDS announce the pending closure of the facility, during the same fiscal year except through the provisions specified by subsection (a).

(c) DIDS may close any state-owned or state-operated facility that provides residential services to persons with mental retardation or other developmental disabilities only upon the effective date of an act of legislation that specifically authorizes the closure of the facility or with a specific line item appropriation for that purpose in an annual appropriations act.

(d) When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, DIDS may seek relief from the requirements of this section in the chancery court of the county where the facility is located. In these situations:

(1) DIDS shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and the resident's guardian, at least ten (10) days prior to filing an emergency petition in the chancery court; and

(2) All interested parties, including DIDS, the resident, the resident's immediate family, the resident's guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection (d).

(e) Any resident, family member or guardian, or other interested parties, with standing to act on behalf of the resident who wishes to challenge the

decision or actions of DIDS regarding the notice requirements of subsection (a) shall have a cause of action in the chancery court of the county in which the facility is located, or in Davidson County chancery court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

(f) Any resident, family member or guardian, or other interested parties, with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the chancery court of the county in which the facility is located, or in Davidson County chancery court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

(g) A court hearing as provided under subsection (f) shall consider each of the following items relevant to the closure of the facility:

(1) Estimated timelines for the implementation of the closure of the facility;

(2) The types and array of available and accessible community-based services for individuals with mental retardation and other developmental disabilities and their families;

(3) The rights of individuals with mental retardation and other developmental disabilities;

(4) The process used to develop a community living plan;

(5) Individual and community monitoring and safeguards to protect health and safety;

(6) The responsibilities of state and local governments;

(7) The process used to transfer ownership or the state's plan to reuse the property; and

(8) Other issues identified by DIDS, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident that may affect the residents, their families, employees, and the community.

(h) For any facility that DIDS has announced plans for closure prior to July 1, 2010, other than pursuant to a federal court order or settlement DIDS shall be subject to the notice provisions of this section within ten (10) days of July 1, 2010. DIDS shall delay proceedings toward closure until the proceedings for all hearings permitted under this section have been completed.

(i) Immediately upon the effective date of this act becoming law, all actions in furtherance of the planned closing or down-sizing of Clover Bottom Developmental Center will immediately cease, including, but not limited to, laying off employees, moving the residents of the center to other placements, or both, unless such actions are specifically mandated by court order. Such actions will not resume until the following are accomplished:

(1) The DIDS constructs thirty (30) homes in the Middle Tennessee community, equipping each to provide a home to four (4) of the persons with mental retardation presently living at Clover Bottom. These homes will be state-operated and staffed by state employees, at the safe, prevailing resident-to-employee ratio;

(2) The DIDS immediately informs the families and guardians of each Clover Bottom resident that their choices for placement of their family member presently living at Clover Bottom include the thirty (30) community, state-operated homes presently being constructed or planned. The opportunity to make a new choice is to be available to the

families and guardians of each Clover Bottom resident regardless of any prior choice of placement they have indicated; and

(3) The DIDS develops a plan to transfer persons presently employed at Clover Bottom to the new, state operated community homes, as their construction is completed and Clover Bottom residents are transferred there. To the extent reasonably possible, the employees who are transferred to specific homes should be the same employees who have already been providing care to the Clover Bottom residents who will live in the new homes.

None of the requirements indicated above shall prevent the DIDS from continuing or instituting an immediate reduction-in-force to reduce the Clover Bottom workforce to the level which will be required to operate the thirty (30) new, state-operated community homes built for the present Clover Bottom residents, provided such reduction does not violate any existing court order.

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring

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